

No. 11998

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MICHAEL J. FANNING, Individually, and as Post-
master of the City of Los Angeles, California,
Appellant,

vs.

AL WILLIAMS and AL WILLIAMS HEALTH
SYSTEM OF LOS ANGELES, INC., a corporation,
Appellees.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United States
for the Southern District of California
Central Division

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellants:

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United States Attorney

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For Appellees:

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Los Angeles 26, Calif. [1*]

In the District Court of the United States in and for the
Southern District of California
Central Division

No. 5043-P.H.

AL WILLIAMS and AL WILLIAMS HEALTH
SYSTEM OF LOS ANGELES, INC., a corporation,
Plaintiffs,

vs.

MICHAEL J. FANNING, Individually and as Post-
master of the City of Los Angeles, California,
Defendants.

ANSWER

For answer to the Amended Complaint of plaintiffs in the above-entitled action the defendant above named admits, denies and alleges as follows:

FIRST DEFENSE

That the complaint fails to state a cause of action against the defendant upon which relief can be granted.

SECOND DEFENSE

I.

Admits all of the allegations of paragraph I of plaintiffs' Amended Complaint.

II.

Answering the allegations of paragraph II of plaintiffs' Amended Complaint defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph, and, basing his denial on that ground, denies generally and specifically the allegations of said paragraph. [2]

III.

Answering paragraph III of plaintiffs' Amended Complaint defendant admits all of the allegations therein contained.

IV.

Answering paragraph IV of plaintiffs' Amended Complaint defendant denies each and every allegation therein contained.

V.

Answering paragraph V of plaintiffs' Amended Complaint defendant admits all of the allegations therein contained.

VI.

Answering paragraph VI of plaintiffs' Amended Complaint this defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph, and, basing his denial on that ground, denies generally and specifically the allegations of said paragraph.

VII.

Answering paragraph VII of plaintiffs' Amended Complaint this defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph, and, basing his denial on that ground, denies generally and specifically the allegations of said paragraph.

VIII.

Answering paragraph VIII of plaintiffs' Amended Complaint this defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph, and, basing his denial on that ground, denies generally and specifically the allegations of said paragraph.

IX.

Answering paragraph IX of plaintiffs' Amended Complaint admits all the allegations of said paragraph except this defendant has no knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff Al Williams is the sole owner and proprietor of said business which is located in said City of Los Angeles, California, and, basing his denial on that ground, denies generally and specifically said allegations of said paragraph. [3]

X.

Answering paragraph X of plaintiffs' Amended Complaint defendant admits all of the allegations therein contained, except defendant denies each and every pretense, representation and promise contained in the advertisements and in the written matter sent through the mails by the plaintiffs.

XI.

Answering paragraph XI of plaintiffs' Amended Complaint defendant admits all of the allegations therein contained.

XII.

Answering paragraph XII of plaintiffs' Amended Complaint defendant admits all of the allegations therein contained.

XIII.

Answering paragraph XIII of plaintiffs' Amended Complaint defendant denies each and every allegation therein contained, but alleges that the said charges are supported by substantial evidence.

XIV.

Answering paragraph XIV of plaintiffs' Amended Complaint defendant admits that evidence produced at

said hearing with regard to the representations, pretenses and promises made by the plaintiffs came through the testimony of Inspector John W. Davis and others. Defendant denies generally and specifically all of the other allegations of said paragraph not specifically admitted.

XV.

Answering paragraph XV of plaintiffs' Amended Complaint defendant admits the charges of the respondents, but on the contrary alleges that each and every one of the charges preferred against the plaintiffs was supported by substantial evidence, and that the representations and promises in the advertising material of plaintiffs sent through the United States mails were in truth and fact misleading and did perpetrate and were perpetrating a fraud upon the addressees, to-wit: the public. Denies each and every other allegation not specifically admitted. [4]

XVI.

Answering paragraph XVI of plaintiffs' Amended Complaint defendant denies each and every allegation therein contained.

XVII.

Answering paragraph XVII of plaintiffs' Amended Complaint defendant denies that all of the representations appearing on pages 16 to 39, both inclusive, of Exhibit A are true, and as to the other allegations contained in said paragraph this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph, and, basing his denial on that ground, denies generally and specifically the allegations of said paragraph.

XVIII.

Answering paragraph XVIII of plaintiffs' Amended Complaint defendant admits the testimony and proceedings, as set forth in paragraph XVIII, but denies each and every allegation not herein specifically admitted.

XIX.

Answering paragraph XIX of plaintiffs' Amended Complaint defendant admits all of the allegations therein contained.

XX.

Answering paragraph XX of plaintiffs' Amended Complaint defendant denies each and every allegation therein contained.

XXI.

Answering paragraph XXI of plaintiffs' Amended Complaint defendant admits all of the allegations therein contained.

XXII.

Answering paragraph XXII of plaintiffs' Amended Complaint defendant denies each and every allegation contained therein and alleges that there was substantial evidence produced at the hearing to support the findings of the Postmaster General in that the plaintiffs are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises in violation of Sections 259 and 732 of Title 39, United States Code, and which scheme and device were deceiving, misleading and committing a fraud upon the addressees of said mail. to-wit: the public. [5]

XXIII.

Answering paragraph XXIII of plaintiffs' Amended Complaint defendant denies each and every allegation therein contained.

XXIV.

Answering paragraph XXIV of plaintiffs' Amended Complaint defendant denies each and every allegation therein contained and alleges that the said record, Exhibit A, and the said Findings of Fact, Exhibit B, did establish to the satisfaction of the Postmaster General that the plaintiffs were and are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises in violation of Sections 259 and 732 of Title 39, United States Code, and which scheme and device were deceiving, misleading and committing a fraud upon the addressees of said mail, to-wit: the public.

XXV.

Answering paragraph XXV of plaintiffs' Amended Complaint defendant denies each and every allegation therein contained, but admits that the affidavits set forth in said paragraph were presented, but as to the statements and representations contained in said affidavits the defendant is without knowledge or information sufficient to form a belief as to the truth of the statements and representations contained in said affidavits, and, basing his denial on that ground, denies generally and specifically the contents of the said affidavits.

XXVI.

Answering paragraph XXVI of plaintiffs' Amended Complaint defendant denies each and every allegation therein contained.

XXVII.

Answering paragraph XXVII of plaintiffs' Amended Complaint defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph, and, basing his denial upon that ground, denies generally and specifically the allegations of said paragraph.

XXVIII.

Answering paragraph XXVIII of plaintiffs' Amended Complaint defendant denies each and every allegation therein contained. [6]

XXIX.

Answering paragraph XXIX of plaintiffs' Amended Complaint defendant admits that on or about August 17, 1945 the plaintiff Al Williams voluntarily consented that his mail should be withheld from delivery at Los Angeles, California, pending the decision of the Post Office Department upon the issues presented at said hearing; that as to the allegations therein contained that plaintiff Al Williams owns his own home and place of residence and other real property in Los Angeles and desires and expects to reside there during the remainder of his lifetime, this defendant is without knowledge or information sufficient to form a belief as to the truth of said allegations, and, basing his denial on that ground, denies generally and specifically the said allegations. Defendant denies generally and specifically all of the other allegations of said paragraph XXIX.

XXX.

Answering paragraph XXX of plaintiffs' Amended Complaint defendant admits all of the allegations therein, except the defendant denies generally and specifically that there were being received daily at said Post Office approximately fifty letters addressed to the plaintiff Al Williams and about four hundred fifty letters daily addressed to said plaintiff under the other designations set forth in said fraud order, or in any other amount either, as alleged in said paragraph, or otherwise, or at all.

XXXI.

Answering paragraph XXXI of plaintiffs' Amended Complaint the defendant denies each and every allegation therein contained.

THIRD DEFENSE

I.

For a further separate and distinct defense defendant alleges that pursuant to statute, Title 39, U. S. C. A., Section 259, the Postmaster General may, upon evidence satisfactory to him that any person or company is conducting any scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations or promises, instruct any postmaster, at which office registered letters or any other letters or mail matter arrive directed to any such person or company, to return all such mail [7] matter to the postmaster at the office at which it was originally mailed, and also such mail matter so returned to such

postmaster shall be by him returned to the writers thereof under such regulations as the postmaster may prescribe.

II.

That the Postmaster General, after a hearing, found upon evidence satisfactory to him that the mailing material sent through the United States mails by the plaintiffs was a scheme for the obtaining of money through the mails by means of false and fraudulent pretenses, representations and promises, in violation of Sections 259 and 732 of Title 39, United States Code, and which scheme and device were deceiving, misleading and committing a fraud upon the addressees of said mail, to-wit: the public.

III.

That thereafter, on December 10, 1945, the Postmaster General made an order in words and figures as follows:

“Post Office Department
Washington

“Order No. 29990

Dec 10 1945

“It having been made to appear to the Postmaster General upon evidence satisfactory to him, that Al Williams; Al Williams, Health Conditioner; Al Williams, Physical Conditioner; Al Williams Health System; The Al Williams Health System, and Williams Health System, and their officers and agents as such, at Los Angeles, California, are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises, in violation of sections 259 and 732 of title 39, United States Code, said evidence being more fully described in the

memorandum of the Solicitor for the Post Office Department of the date of December 6, 1945, and by authority vested in the Postmaster General by said laws the Postmaster General hereby forbids you to pay any postal money order drawn to the order of said party & concerns and you are hereby directed to inform the remitter of any such postal money order that payment thereof has been forbidden, and that the amount thereof [8] will be returned upon the presentation of the original order or a duplicate thereof applied for and obtained under the regulations of the Department.

“And you are hereby instructed to return all letters, whether registered or not, and other mail matter which shall arrive at your office directed to the said party & concerns to the postmasters at the offices at which they were originally mailed, to be delivered to the senders thereof, with the words ‘Fraudulent: Mail to this address returned by order of Postmaster General’ plainly written or stamped upon the outside of such letters or matter. Where there is nothing to indicate who are the senders of letters not registered or other matter, you are directed to send such letters and matter to the appropriate dead letter branch with the words ‘Fraudulent: Mail to this address returned by order of Postmaster General’ plainly written or stamped thereon, to be disposed of as other dead matter under the laws and regulations applicable thereto.

(Signed) J. M. Donaldson
Acting Postmaster General

(Case No., 44237-F)

To the Postmaster.

Los Angeles, California.”

Wherefore this defendant prays:

1. That plaintiffs take nothing by its complaint against this defendant and that the same be dismissed.

2. For the costs of suit incurred and for such other and further relief as to the court may seem just and proper in the premises.

JAMES M. CARTER

United States Attorney

CLYDE C. DOWNING

Assistant United States Attorney
Chief, Civil Division

BERNARD B. LAVEN

Assistant United States Attorney
Attorneys for Defendant Michael J. Fanning [9]

Received copy of the within Answer this 29th day of March, 1948. Richard North, Attorney for Plaintiffs.

[Endorsed]: Filed Mar. 29, 1948. Edmund L. Smith, Clerk. [10]

[Title of District Court and Cause]

MOTION FOR SUMMARY JUDGMENT

Come now the above-named plaintiffs and move the court to grant and enter a summary judgment herein in their favor and against the defendants, making permanent the preliminary injunction heretofore issued herein, upon the ground that the answer of the defendants filed herein raises no genuine issue as to any material fact alleged in plaintiffs' amended complaint, all material allegations thereof being admitted by said answer, leaving only a question of law to be decided, and upon the ground that the fraud

order was issued by the Postmaster General upon opinion evidence alone, without authority to do so, and that there was and is no substantial evidence to support the Findings of Fact of the Postoffice Department (Exhibit "B" in amended complaint) or the issuance of said fraud order.

Dated March 31, 1948.

RICHARD L. NORTH
Attorney for Plaintiffs [11]

Received copy of the within Motion for Summary Judgment this 31st day of March, 1948. James M. Carter, by Veloris Bonhus, Attorney for Deft.

[Endorsed]: Filed Mar. 31, 1948. Edmund L. Smith, Clerk. [12]

[Title of District Court and Cause]

NOTICE OF MOTION FOR SUMMARY
JUDGMENT

To the Defendants Above-Named and to James M. Carter, U. S. Attorney at Los Angeles; Clyde C. Downing and Bernard B. Laven, Assistant U. S. Attorneys, Their Attorneys Herein:

You and each of you will please take notice that plaintiffs will, on Monday, April 12, 1948, at 10:00 o'clock A. M. of said day, or as soon thereafter as the matter may be heard by the court in the courtroom of the Honorable Peirson M. Hall, Judge of said court, located on the second floor of the Federal Building at Temple and Spring Streets, in the City of Los Angeles, State of California, move the said court for a summary judgment herein in favor of plaintiffs and against the defendants, upon the

ground that the answer of the defendants filed herein raises no material issue of fact but leaves only a question of law to be decided, and upon the further ground that the fraud order issued by the [13] Postmaster General and directed against the plaintiffs was issued upon opinion evidence and without authority, and without any substantial evidence to support it.

Said motion will be made and based upon the amended complaint and the answer thereto, and upon the records and files herein.

Dated March 31, 1948.

RICHARD L. NORTH

Attorney for Plaintiffs [14]

Received copy of the within Notice of Motion for Summary Judgment this 31st day of March, 1948. James M. Carter, by Veloris Bonhus, Attorney for Defendants.

[Endorsed]: Filed Mar. 31, 1948. Edmund L. Smith, Clerk. [15]

[Title of District Court and Cause]

AMENDED ANSWER

Defendant Michael J. Fanning, individually and as postmaster of the United States Post Office at Los Angeles, California, for answer to the plaintiffs' amended complaint herein, admits, denies and alleges:

FIRST DEFENSE

I.

Defendant admits the jurisdiction of this Honorable Court in the above-entitled cause as alleged in paragraph I of the amended complaint herein.

II.

Answering paragraph II of plaintiffs' amended complaint defendant denies each and every allegation therein contained.

III.

Answering paragraph III of plaintiffs' amended complaint defendant denies each and every allegation therein contained. [16]

IV.

Answering paragraph IV of plaintiffs' amended complaint this defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph, and, basing his denial on that ground, denies generally and specifically all the allegations of said paragraph and avers the facts to be that the fraud order against plaintiffs was issued upon evidence which was satisfactory to the Postmaster General and which was adduced during the hearing before the Post Office Department which was held June 20, 1945, after due notice to plaintiff as more fully set forth in the memorandum for the Postmaster General embodying a finding of fact and recommending the issuance of a fraud order dated December 6, 1945, and signed by the Solicitor of the Post Office Department, a copy of which is attached to plaintiffs' complaint as Exhibit A, which sets forth the particulars of the aforesaid hearing and finds the facts which were made matters of record during said proceeding. Answering further upon information and belief defendant avers that all of the evidence made a matter of record at such hearing was transmitted to the Postmaster General for his consideration, together with a brief and supplemental brief filed by counsel for Al Williams, et al.,

subsequent to the hearing and after being furnished with a copy of the transcript of testimony received thereat. Upon consideration of the evidence before him as aforesaid, the Postmaster General issued a fraud order against Al Williams, Al Williams Health Conditioner, and other names which were then being employed by plaintiff for the purpose of conducting a fraudulent enterprise through the United States mails contrary to the provisions of the postal fraud order statutes, Title 39 U. S. Code, Sections 259 and 732, as more fully set forth in Exhibit A attached to plaintiffs' complaint.

V.

Defendant admits that he is now and has been for sometime past postmaster in charge of the United States Post Office at the City of Los Angeles, California; that he is a resident and citizen of said State but denies that he has exclusive management of said office inasmuch as he is subject to the provisions of the Postal Laws and Regulations and to the instructions given him pursuant [17] thereto by the Postmaster General of the United States with respect to the receipt and distribution of all mail matter received at said post office through the United States mails.

VI.

Defendant denies the allegations of paragraph VI of the amended complaint of plaintiff except insofar as they are conclusions of law which, defendant is advised by counsel, require no answer. Further answering said paragraph defendant, upon information and belief, avers that the hearing in this case was conducted by the Post Office Department at Washington, D. C., in accordance with the practice of the Department in such cases which has existed over a period of many years and which, upon

being questioned, has not been found by the Supreme Court of the United States or any other court, to be illegal or improper practice or method of hearing such cases. Further answering said paragraph defendant, upon information and belief, avers that the Congress of the United States does not authorize the Postmaster General to hold hearings with respect to the alleged violation of the postal fraud statutes any other place except Washington, D. C., nor has it provided him with appropriations which may be expended for the purpose of holding hearings in any other place outside of the Department.

VII.

Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VII of plaintiffs' amended complaint and refers this Honorable Court to the finding of fact of the Solicitor of the Post Office Department attached to plaintiffs' complaint as Exhibit A for a description of the operation and effectiveness of the Al Williams Plan of Health Reducing, false and fraudulent sale of which through the mails constitutes the basis for the fraud order against plaintiff.

VIII.

Defendant denies that plaintiffs' business is not an unlawful one as alleged in paragraph VIII of plaintiffs' amended complaint and again respectfully refers this Honorable Court to Exhibit A attached to plaintiffs' complaint, namely, the finding of fact of the Solicitor of the Post Office Department which sets forth the true facts with respect to the fraudulent scheme which plaintiffs were [18] conducting through the mails and also the order of the Postmaster General dated December 6, 1945, stating that evidence is satisfactory to him that said scheme is fraudu-

lent and constitutes a violation of 39 U. S. Code, Sections 259 and 732.

IX.

Answering paragraph IX of plaintiffs' amended complaint this defendant has no knowledge or information sufficient to form a belief as to whether plaintiff Al Williams is the sole owner of said business and, basing his denial on that ground, denies generally and specifically said allegation; and further answering said paragraph IX defendant has no knowledge or information sufficient to form a belief as to whether any of the letters addressed to Al Williams relate to social or other subjects not connected with the unlawful and fraudulent scheme aforesaid, but alleges that such allegation is not material to the issues before this Honorable Court, and upon information and belief admits that Al Williams, using his own and the several names set forth in the fraud order complained of by plaintiffs, obtained and attempted to obtain remittances of money through the mails from divers persons throughout the United States by means of pretenses, representations and promises, more fully described in the findings of fact of the Solicitor of the Post Office Department, attached to plaintiffs' complaint as Exhibit A, and that plaintiffs' said representations were determined by the Postmaster General to be false and fraudulent, as set forth in said Exhibit A.

X.

Answering paragraph X of plaintiffs' amended complaint defendant admits the allegation therein contained with respect to the notice served upon plaintiffs to show cause why a fraud order should not be issued against Al Williams, et al., but defendant denies each and every other allegation therein specifically not admitted.

XI.

Answering paragraph XI of plaintiffs' amended complaint defendant admits the allegations in said paragraph XI with respect to the notice served upon plaintiffs to show cause why a fraud order should not be issued against Al Williams, et al. [19]

XII.

Answering paragraph XII of plaintiffs' amended complaint defendant admits all of the allegations therein contained.

XIII.

Answering paragraph XIII of plaintiffs' amended complaint defendant denies each and every allegation therein contained, but alleges that there was ample and substantial evidence to support and prove the charges of fraudulent use of the mails by plaintiffs, as more fully set forth in Exhibit A attached to plaintiffs' complaint, which is the order of the Postmaster General and the findings of fact of the Solicitor of the Post Office Department, which set forth the facts which prove that plaintiffs' advertisements falsely represented to the public that any obese person, no matter how much overweight or how old, could easily and safely reduce weight as desired easily and safely without strict dieting, and that the Williams plan tablets would prevent persons who were reducing from becoming hungry, but would in a few days' time result in the user's loss of a desire to overeat and cause the user to feel full of pep and have more energy; and further, as shown by said Exhibit A, plaintiffs were falsely representing that their so-called "Special Body Massage Cream" would eliminate flabby flesh caused by loss of weight and would beautify the contour of the

throat, bust, upper arms, calves of legs and thighs, all of which representations were found to be false and fraudulent upon the basis of uncontradicted medical expert testimony adduced at the hearing held with respect to this matter on June 30, 1945, which testimony on behalf of the Government was not rebutted by any competent evidence offered by Al Williams in reply thereto, as more fully set forth in the finding of fact of the Solicitor of the Post Office Department, Exhibit A attached to plaintiffs' complaint.

XIV.

Answering paragraph XIV of plaintiffs' amended complaint defendant denies generally and specifically all of the allegations therein contained except that in addition to the testimony of Post Office Inspector John W. Davis there was presented at said hearing the testimony of the only qualified medical expert witness there present who was competent to testify at such hearing, there being [20] no medical witness of any kind offered by the plaintiffs, as shown by Exhibit A attached to plaintiffs' amended complaint, and that the testimony of said medical expert witness for the Government clearly and conclusively proved the false and fraudulent character of the representations made by the plaintiff Al Williams for the purpose of selling the so-called Williams plan to the public through the mails.

XV.

Answering paragraph XV of plaintiffs' amended complaint defendant denies each and every allegation therein contained, but on the contrary alleges that each and every one of the charges preferred against the plaintiffs was supported by substantial evidence, and that the representa-

tions and promises in the advertising material of the plaintiffs sent through the mails were in truth and fact misleading and did perpetrate and were perpetrating a fraud upon the addressees, to-wit: the public.

XVI.

Answering paragraph XVI of plaintiffs' amended complaint defendant denies each and every allegation therein contained and incorporates by reference the findings of fact of the Solicitor of the Post Office Department which is marked Exhibit A and attached to plaintiffs' complaint.

XVII.

Answering paragraph XVII of plaintiffs' amended complaint defendant denies that all of the representations appearing on pages 16 to 39, both inclusive, of Exhibit A are true, but admits that said representations have been made to the public over a period of time; and for further answer to said paragraph XVII defendant incorporates by reference Exhibit A, attached to plaintiffs' complaint, which is the finding of fact of the Solicitor of the Post Office Department.

XVIII.

Answering paragraph XVIII of plaintiffs' amended complaint defendant admits the testimony and proceedings as set forth in paragraph XVIII, and particularly admits that the Government produced as an expert witness Dr. Lawrence E. Putnam who is fully qualified by training and experience to testify regarding the matters before the Department in the hearing with respect to [21] plaintiffs' so-called reducing plan and whose qualifications to testify were accepted by plaintiffs' counsel at said hearing as shown by his statements set forth in a copy of the

transcript of the proceedings which is Exhibit A to the complaint, page 63, line 22:

“Mr. Lawson. Well, I think the witness is a qualified witness but I think the weight of his testimony is to be determined by the extent of his practice with regard to any particular case.

“Assistant Solicitor. That’s a question of weight.

“Mr. Lawson. That’s a question of weight. I think the witness is qualified.”

Further answering said paragraph XVIII of plaintiffs’ amended complaint defendant alleges that the excerpts from Dr. Putnam’s testimony set forth in said paragraph are incomplete and not representative of the evidence which he furnished in the course of the hearing and which is accurately summed up as to fact and effect in the findings of fact of the Solicitor which is attached as Exhibit A to plaintiffs’ complaint and to which the Court is respectfully referred by the defendant for further answer to the aforesaid allegations of said paragraph XVIII.

Further answering said paragraph XVIII defendant denies that Dr. Putnam’s testimony was exclusively in the nature of opinion evidence but alleges that as the transcript attached to the complaint as Exhibit A clearly shows, Dr. Putnam testified concerning numerous scientific facts, well established and well known which show the lack of any truthful basis for the representations made by plaintiff in his advertising literature and particularly with respect to the advertising representations which are specifically charged to be false and are more fully set forth in the finding of fact of the Solicitor in said Exhibit A, which shows that the said representations are in fact false and fraudulent.

Further answering said paragraph XVIII of the complaint defendant alleges that the transcript of the proceedings and the finding of fact of the Solicitor show that Al Williams was not competent to testify concerning the scientific medical aspects of the so-called reducing plan, and upon information and belief alleges that there are numerous physicians in Washington, D. C., upon whom plaintiffs could have called for expert medical testimony with respect to Williams' [22] so-called reducing plan if they honestly and truly desired to inform the Post Office Department as to the scientific basis of the "plan," if any exists; and that the Solicitor of the Post Office Department found from competent and relevant evidence before him that there is no scientific factual basis for either the testimony which Williams attempted incompetently to present or for the representations by means of which the public was misled and induced to send remittances of money through the mails to plaintiffs in the operation of their scheme through the mails.

XIX.

Answering paragraph XIX of plaintiffs' amended complaint defendant admits that on December 10, 1945 the Postmaster General issued a fraud order set forth in paragraph XIX of plaintiffs' amended complaint and that a copy of the same was received by the defendant in December, 1945, and further admits that a copy thereof was received by the plaintiffs on or about December 17, 1945.

XX.

Answering paragraph XX of plaintiffs' amended complaint defendant denies each and every allegation therein contained.

XXI.

Answering paragraph XXI of plaintiffs' amended complaint the defendant admits that Exhibit A referred to therein is a transcript of the testimony adduced at the hearing held on June 20, 1945; that Exhibit B referred to therein is a copy of the findings of fact of the Solicitor of the Post Office Department made subsequent thereto, but denies that the same constitutes the whole record in this proceeding or that the exhibits not included therein are unimportant as alleged in the said paragraph.

XXII.

Answering paragraph XXII of plaintiffs' amended complaint defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph and, basing his denial on that ground, denies generally and specifically each and every allegation of said paragraph, but alleges that the transcript of the testimony and the entire record contain ample evidence to support the findings of fact of the Solicitor of the Post Office [23] Department, showing that the plaintiffs were engaged in obtaining money through the mails by means of false and fraudulent pretenses, representations and promises in violation of 39 U. S. Code 259 and 732, and that the fraud order, which was issued by the Postmaster General to protect the public from the scheme which was then and there being conducted by the plaintiffs through the means of the mails, was legal and necessary to protect the public from being further deceived, misled and swindled by the plaintiffs.

XXIII.

Answering paragraph XXIII of plaintiffs' amended complaint defendant denies each and every allegation therein contained, but alleges that the record shows that the

findings of fact of the Solicitor of the Post Office Department fully demonstrate that there was ample evidence to support the issuance of the fraud order by the Postmaster General against the fraudulent scheme which the plaintiffs were conducting through the mails prior to the issuance of said fraud order.

XXIV.

Answering paragraph XXIV of plaintiffs' amended complaint defendant denies each and every allegation therein contained, and alleges that the said record, Exhibit A, and the said findings of fact, Exhibit B, did establish to the satisfaction of the Postmaster General that the plaintiffs were and are engaged in conducting a scheme and device for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, all in violation of Title 39, Sections 259 and 732, U. S. Code, which scheme and device were deceiving, misleading and perpetrating a fraud upon the addressees of the mail, to-wit: the public.

XXV.

Answering paragraph XXV of plaintiffs' amended complaint defendant denies each and every allegation therein contained, and particularly that Al Williams or any other respondent party to said proceedings was deprived of a full and fair hearing, or that his or their rights were violated in any way, and further answering alleges that the plaintiffs are in effect endeavoring to blame the Post Office Department for their failure to present competent testimony and [24] evidence at the hearing held in the Post Office Department on June 20, 1945, although respondents were duly apprised long before said hearing of the charges of fraud from which it was obvious to them that scientific proof presented through qualified competent

medical witnesses would be necessary on the part of both the Government and the respondents, and that plaintiffs' failure to present proof by means of competent witnesses at said hearing, their mistaken attempt to present Al Williams as a competent, qualified witness on medical matters is not attributable to any failure on the part of the Post Office Department to afford plaintiffs full opportunity to be heard. Further answering said paragraph XXV of plaintiffs' amended complaint, defendant, upon information and belief and upon the basis of transcript of the proceedings of this case before the Post Office Department, alleges that the answer filed to the charges of fraudulent use of the mails by Al Williams, et al., which was received by the Solicitor of the Post Office Department at the commencement of the hearing, does not allege any hardship on the part of the plaintiffs here (respondents in said hearing) on the basis of the unavailability of medical witnesses to testify on behalf of Al Williams and, upon information and belief, alleges that such issue was only raised long after the hearing when respondent had returned to California and realized that the testimony before the Post Office Department given by Dr. Lawrence E. Putnam conclusively showed the false and fraudulent character of the representations made by Al Williams, whereupon plaintiffs sought to create a further issue and to complicate and delay the decision in this case to the advantage of plaintiffs and the irreparable injury to the public by requesting the reopening of the already closed record for the alleged purpose of hearing doctors whose affidavits purport to be set forth by plaintiffs in paragraph XXV of the plaintiffs' amended complaint and who refused to appear before the Solicitor of the Post Office Department at Washington, D. C., to testify, which affi-

davits are wholly immaterial to the issue before this Court as to whether there was substantial evidence before the Postmaster General, and upon which, same being satisfactory to him, he did legally issue the fraud order against plaintiffs pursuant to the provisions of Title 39, U. S. Code, 259 and 732. [25]

XXVI.

Answering paragraph XXVI of plaintiffs' amended complaint defendant denies each and every allegation therein contained.

XXVII.

Answering paragraph XXVII of plaintiffs' amended complaint the defendant denies each and every allegation therein contained.

XXVIII.

Answering paragraph XXVIII of plaintiffs' amended complaint defendant denies each and every allegation therein contained, and alleges upon information and belief that the evidence before the Postmaster General completely contradicts and discredits the allegations of said paragraph XXVIII and shows that the evidence upon which the fraud order in this case was issued by the Postmaster General for the protection of the public is based upon uncontradicted, ample and substantial evidence showing that Al Williams, et al., were conducting a fraudulent scheme through the United States mails in violation of Sections 259 and 732, Title 39, United States Code.

XXIX.

Answering paragraph XXIX of plaintiffs' amended complaint defendant admits the impounding of mail addressed to Al Williams and other names used by plaintiffs

in conducting said scheme through the mails and fully set forth in the order of the Postmaster General. Defendant further admits that a substantial amount of mail has been received at the Los Angeles Post Office addressed to Al Williams and other names used by him in the operation of the fraudulent mail order scheme against which the Postmaster General's order is directed; that defendant has no knowledge or information sufficient to form a belief as to whether said mail received at the said post office contains remittances of money orders and, basing his denial on that ground, denies generally and specifically said allegations. Defendant further alleges upon information and belief that all of such mail and remittances received at said post office addressed to Al Williams under the various names used by him were obtained by means of false and fraudulent pretenses, representations and promises made in violation of Title 39, U. S. Code, Sections 259 and 732, as more fully set forth in Exhibit A hereof and as determined by the [26] Postmaster General prior to the issuance of the fraud order complained of herein. Further answering said paragraph defendant has no knowledge or information sufficient to form a belief as to whether certain mail so addressed will be received at the Los Angeles Post Office as long as the plaintiffs' names shall be listed in any directory in said city; and as to whether plaintiff Al Williams owns his own home and place of residence and other real property in Los Angeles and desires and expects to reside there during the remainder of his lifetime and, basing his denial on that ground, denies generally and specifically the said allegations. Defendant denies generally and specifically all of the other allegations of said paragraph XXIX not specifically admitted.

XXX.

Answering paragraph XXX of plaintiffs' amended complaint defendant admits that the fraud order against Al Williams and other names set forth therein will be fully enforced, having been properly and legally issued by the Postmaster General, and admits also that pursuant to the provisions of said order all mail addressed to Al Williams, Al Williams, Health Conditioner, Al Williams, Physical Conditioner, Al Williams Health System, The Al Williams Health System, and Williams Health System, will be returned to the senders stamped, "Fraudulent: Mail to this address returned by order of the Postmaster General," as alleged in paragraph XXX of the complaint and that unless permanently enjoined therefrom defendant will so dispose of all matter received at the post office at Los Angeles, California, addressed to the names set forth in the fraud order complained of herein; defendant denies that mail addressed to any other than the names set forth in the order of the Postmaster General will be so treated and avers that he has and will deliver all other mail addressed to any name not so specifically set forth in the fraud order in accordance with the directions on the envelopes or wrappers containing said mail unless otherwise directed by the addressee of such mail or by the Postmaster General or by the order of the court.

XXXI.

Answering paragraph XXXI of plaintiffs' amended complaint defendant denies that plaintiffs will suffer any irreparable loss or injury as alleged by said paragraph if the fraud order which was issued by the Postmaster General for the [27] protection of the public against the fraudulent enterprise being carried on through the mails by plaintiffs is not enjoined by this Court.

XXXII.

Defendant denies each and every allegation not herein specifically admitted except as to those matters as to which he has alleged that he is without knowledge or information and those matters which he has answered upon information and belief.

SECOND DEFENSE

Plaintiff has no claim upon which relief can be granted as shown by the provisions of the Postal Laws and Regulations and the transcript of the proceedings before the Post Office Department, the findings of fact of the Solicitor of the Post Office Department, and the provisions of the order of the Postmaster General.

THIRD DEFENSE

I.

For a further separate and distinct defense defendant alleges that pursuant to statute, Title 39, U. S. C. A., Section 259, the Postmaster General may, upon evidence satisfactory to him that any person or company is conducting any scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations or promises, instruct any postmaster, at which office registered letters or any other letters or mail matter arrive directed to any such person or company, to return all such mail matter to the postmaster at the office at which it was originally mailed, and also such mail matter so returned to such postmaster shall be by him returned to the writers thereof under such regulations as the postmaster may prescribe.

II.

That the Postmaster General, after a hearing, found upon evidence satisfactory to him that the mailing material sent through the United States mails by the plaintiffs was a scheme for the obtaining of money through the mails by means of false and fraudulent pretenses, representations and promises, in violation of Sections 259 and 732 of Title 39, United States Code, and which scheme and device were deceiving, misleading and committing a fraud upon the addressees of said mail, to-wit: the public. [28]

III.

That thereafter, on December 10, 1945, the Postmaster General made an order in words and figures as follows:

“Post Office Department
Washington

“Order No. 29990

Dec 10 1945

“It having been made to appear to the Postmaster General, upon evidence satisfactory to him, that Al Williams; Al Williams, Health Conditioner; Al Williams, Physical Conditioner; Al Williams Health System; The Al Williams Health System, and Williams Health System, and their officers and agents as such, at Los Angeles, California, are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises, in violation of sections 259 and 732 of title 39, United States Code, said evidence being more fully described in the memorandum of the Solicitor for the Post Office Department of the date of December 6, 1945, and by

authority vested in the Postmaster General by said laws the Postmaster General hereby forbids you to pay any postal money order drawn to the order of said party & concerns and you are hereby directed to inform the remitter of any such postal money order that payment thereof has been forbidden, and that the amount thereof will be returned upon the presentation of the original order or a duplicate thereof applied for and obtained under the regulations of the Department.

“And you are hereby instructed to return all letters, whether registered or not, and other mail matter which shall arrive at your office directed to the said party & concerns to the postmasters at the offices at which they were originally mailed, to be delivered to the senders thereof, with the words ‘Fraudulent: Mail to this address returned by order of Postmaster General’ plainly written or stamped upon the outside of such letters or matter. Where there is nothing to indicate who are the senders of letters not registered or other [29] matter, you are directed to send such letters and matter to the appropriate dead letter branch with the words ‘Fraudulent: Mail to this address returned by order of Postmaster General’ plainly written or stamped thereon, to be disposed of as other dead matter under the laws and regulations applicable thereto.

(Signed) J. M. Donaldson

Acting Postmaster General

(Case No. 44237-F)

To the Postmaster.

Los Angeles, California.”

Wherefore this defendant prays:

1. That plaintiffs take nothing by their complaint against this defendant and that the same be dismissed.

2. For the costs of suit incurred and for such other and further relief as to the Court may seem just and proper in the premises.

JAMES M. CARTER

United States Attorney

CLYDE C. DOWNING

Assistant United States Attorney
Chief, Civil Division

BERNARD B. LAVEN

Assistant United States Attorney

Attorneys for Defendant Michael J. Fanning [30]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Apr. 9, 1948. Edmund L. Smith,
Clerk. [31]

[Title of District Court and Cause]

MOTION TO STRIKE AMENDED ANSWER

Come now the plaintiffs above-named and move the Court to strike from the files of this action the amended answer of the defendants, upon the ground that said amended answer was filed herein after plaintiffs' motion for summary judgment upon the original answer was placed upon the calendar for hearing, and that said

amended answer was so filed without leave of Court and without the consent of plaintiffs.

Dated April 13, 1948.

RICHARD L. NORTH

Attorney for Plaintiff [32]

Received copy of the within Motion to Strike Amended Answer this 13th day of April, 1948. James M. Carter, U. S. Atty., Attorney for Defendants, by Gertrude M. Johnson.

[Endorsed]: Filed Apr. 13, 1948. Edmund L. Smith, Clerk. [33]

[Title of District Court and Cause]

NOTICE OF MOTION TO STRIKE AMENDED
ANSWER

To the Defendants Above-Named, and to James M. Carter, U. S. Attorney at Los Angeles; Clyde C. Downing and Bernard B. Laven, Assistant U. S. Attorneys, Their Attorneys Herein:

You and each of you are hereby notified that plaintiffs will, on Monday, April 19, 1948, at 10:00 o'clock A. M., or as soon thereafter as the matter may be heard by the Court, in the courtroom of the Honorable Peirson M. Hall, Judge of said Court, located on the second floor of the Federal Building at Temple and Spring Streets, in the City of Los Angeles, State of California, move the said Court to strike from the files of this action the amended answer of the defendants, upon the ground that said amended answer was filed herein after plaintiffs' motion for summary judgment upon the original answer was placed upon the calendar for hearing, and that said

amended answer was so filed [34] without leave of Court and without plaintiffs' consent.

Said motion will be made and based upon the records and files herein, and upon the rules of said Court.

Dated April 13, 1948.

RICHARD L. NORTH
Attorney for Plaintiffs

Good cause appearing therefor, it is hereby

Ordered that the time of notice of hearing of the above motion to strike the amended answer shall be and it is hereby shortened to ~~four~~ days service of the within notice on or before the close of business on Apr. 14, 1948.

Dated April 13, 1948.

PEIRSON M. HALL
Judge of the District Court [35]

POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION TO STRIKE THE
AMENDED ANSWER

Plaintiffs' motion for summary judgment, based upon the original answer, was placed upon the court calendar several days before the amended answer was filed, without leave of Court or consent of the adverse party.

Rule 15(a) Federal Rules of Civil Procedure. [36]

Received copy of the within Notice of Motion to Strike Amended Answer and Points and Authorities this 13th day of April, 1948. James M. Carter, U. S. Atty., by Gertrude M. Johnson, Attorney for Defendants.

[Endorsed]: Filed Apr. 13, 1948. Edmund L. Smith, Clerk. [37]

[Minutes: Monday, April 19, 1948]

Present: The Honorable Peirson M. Hall, District Judge.

For (1) hearing on motion of plaintiff for a summary judgment, pursuant to notice thereof filed March 31, 1948, and (2) motion of plaintiff to strike amended answer, pursuant to notice thereof filed April 13, 1948; R. L. North, Esq., appearing as counsel for plaintiff; B. B. Laven, Ass't U. S. Att'y, appearing as counsel for defendant;

Attorney North argues in support of motion to strike amended answer. Attorney Laven makes a statement.

The Court orders motion of plaintiff to strike the amended answer granted.

Attorney North argues in support of motion for a Summary Judgment. Attorney Laven argues in opposition.

Court orders cause submitted and temporary restraining order remain in effect. [38]

[Title of District Court and Cause]

MEMORANDUM

Repeated examinations of the entire record of the proceedings before the Postmaster General confirms the contention of the plaintiff that the only evidence in such record to support the order is the opinion evidence of one Putnam, who identified himself as a doctor employed full time by the Food and Drug Administration, and who practiced medicine at night and odd times.

Under the rule of *American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94 and the numerous cases following it, among which are *Jarvis v. Shackelton*, 136 Fed. 2nd, 116, *Pinkus v. Walker*, 21 Fed. Supp. 610, and *Pinkus v. Walker*, 71 Fed. Supp. 993, mere opinion evidence is not substantial evidence to support such an order.

The order of the Postmaster General is not supported by any substantial evidence and it was therefore beyond his lawful authority to issue and is void.

Judgment will be for the plaintiff, who will prepare the appropriate findings, judgment and permanent injunction. The injunction now in force will remain in effect until the permanent injunction is issued.

Dated April 27th, 1948.

PEIRSON M. HALL

Judge

[Endorsed]: Filed Apr. 28, 1948. Edmund L. Smith, Clerk. [39]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF
LAW FOLLOWING PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

The above-entitled cause came on regularly for hearing on the 19th day of April, 1948, on plaintiffs' motion for summary judgment, Richard L. North, Esq. appearing as counsel for plaintiffs, and Bernard B. Laven, Esq., Assistant United States Attorney at Los Angeles, appearing as counsel for the defendants, and the court having considered the pleadings and the exhibits attached to the amended complaint, and having heard oral argument from

counsel on both sides and considered also the written briefs filed by the parties on both sides; having found that there is no genuine issue raised by the answer as to any material fact, and being fully advised in the premises, now finds the following:

FINDINGS OF FACT

1) That the Postmaster General issued that certain fraud [40] order No. 29990, dated December 10, 1945, and set forth in paragraph XIX of plaintiffs' Amended Complaint, and that the defendant, as Postmaster at Los Angeles, California, has ever since enforced the said order against plaintiffs until restrained by preliminary injunction issued herein February 16, 1948.

2) That the said fraud order was issued and based upon evidence taken at a hearing before the Postoffice Department, and that a true copy of all of the said evidence and of all of the proceedings at said hearing is marked "Exhibit A" and attached to the Amended Complaint by reference.

3) That a true copy of the findings of the Postoffice Department after the said hearing, is attached to the Amended Complaint by reference and marked "Exhibit B."

4) That fraud order No. 29990 referred to in the pleadings and issued by the Postmaster General on December 10, 1945, was so issued and based upon opinion evidence.

CONCLUSIONS OF LAW

Whereupon the court concludes as a matter of law:

I.

That the Postmaster General had no authority to issue the said fraud order and that it is void and of no effect, and that plaintiffs are entitled to judgment.

II.

That said fraud order was issued by the Postmaster General without substantial evidence to support it.

III.

That a permanent injunction should be issued, permanently restraining and enjoining the defendants from enforcing the said fraud order or any of the provisions or requirements thereof.

Dated: ~~April 30~~, May 6 [PH] 1948.

PEIRSON M. HALL

Judge of the District Court [41]

Received copy of the within Findings of Fact and Conclusions of Law Following Plaintiffs' Motion for Summary Judgment this 4th day of May, 1948. James M. Carter, U. S. Atty., by Gertrude M. Johnson, Attorney for Defendants.

[Endorsed]: Filed May 6, 1948. Edmund L. Smith, Clerk. [42]

In the District Court of the United States in and for the
Southern District of California

Central Division

No. 5043 P.H. Civil

AL WILLIAMS and AL WILLIAMS HEALTH
SYSTEM OF LOS ANGELES, INC., a corporation,
Plaintiffs,

vs.

MICHAEL J. FANNING, Individually and as Post-
master of the City of Los Angeles, California,
Defendants.

ORDER FOR SUMMARY JUDGMENT

This cause came on to be heard on the 19th day of April, 1948, on motion of plaintiffs for summary judgment, and the court having considered the pleadings in the action and particularly the exhibits attached to the amended complaint by reference, and having heard oral argument from counsel on both sides, and also considered the written argument of both counsel for plaintiff and defendant; having found that there is no genuine issue as to any material fact, and having concluded that the fraud order referred to in the amended complaint was issued by the Postmaster General without authority to do so and without substantial evidence to support it, and having concluded that plaintiffs are entitled to judgment as a matter of law;

It Is Hereby Ordered, Adjudged and Decreed:

1) That summary judgment be entered in favor of plaintiffs. [43]

2) That the preliminary injunction heretofore granted against the defendant be and it is hereby made permanent.

Dated ~~April~~ May 6, 1948.

PEIRSON M. HALL

Judge of the District Court

Judgment entered May 6, 1948. Docketed May 6, 1948. C. O. Book 50, page 528. Edmund L. Smith, Clerk; by J. M. Horn, Deputy. [44]

Received copy of the within Order for Summary Judgment this 3rd day of May, 1948. James M. Carter, U. S. Atty., Attorney for Defendants, by Gertrude M. Johnson.

[Endorsed]: Filed May 6, 1948. Edmund L. Smith, Clerk. [45]

In the District Court of the United States in and for the
Southern District of California
Central Division

No. 5043 PH-Civil

AL WILLIAMS and AL WILLIAMS HEALTH
SYSTEM OF LOS ANGELES, INC., a corporation,
Plaintiffs,

vs.

MICHAEL J. FANNING, Individually and as Post-
master of the City of Los Angeles, California,
Defendants.

PERMANENT INJUNCTION

The above-entitled cause came on to be heard on the 19th day of April, 1948, before the Honorable Peirson M. Hall, Judge of the above-entitled court, on plaintiffs'

motion for summary judgment, duly and regularly served and filed herein, Richard L. North, Esq. appearing as counsel for plaintiffs, and Bernard B. Laven, Esq., Assistant United States Attorney at Los Angeles, appearing as counsel for defendants; and the Court having considered the pleadings and the briefs of respective counsel on the motion, and upon due consideration thereof it appearing to the Court that the plaintiffs should be granted the relief prayed for in their Amended Complaint, and that a permanent injunction should be issued against defendants, and the Court being fully advised in the premises;

Now, Therefore, It Is Ordered that the defendants, [46] Michael J. Fanning, individually, and Michael J. Fanning, as Postmaster of the City of Los Angeles, State of California, and each of them, their agents, deputies, servants and employees, and all persons acting by, through or under them or either of them or by or through their order, be, and they are hereby permanently restrained from in any manner failing or refusing to deliver in the regular course of the mail any and all mail addressed to Al Williams; Al Williams, Health Conditioner; Al Williams, Physical Conditioner; Al Williams Health System; The Al Williams Health System; Williams Health System, or Al Williams Health System of Los Angeles, Inc., and from in any manner carrying out in any respect that certain Order No. 29990, dated December 10, 1945, signed by J. M. Donaldson, and directed to the Postmaster, Los Angeles, California, relating to the mail of Al Williams;

Al Williams, Health Conditioner; Al Williams, Physical Conditioner; Al Williams Health System; The Al Williams Health System; or Williams Health System, and from in any manner stamping any of said mail with the words "Fraudulent: Mail to this address returned by order of the Postmaster General" or with any words to the same effect, or from returning any such mail to the senders thereof, or to the Division of Dead Letters of the United States Post Office, or from withholding from immediate delivery any mail directed to Al Williams; Al Williams, Health Conditioner; Al Williams, Physical Conditioner; Al Williams, Health System; The Al Williams Health System; Williams Health System; or The Al Williams Health System of Los Angeles, Inc.; or to Al Williams under any similar designation, and also from failing or refusing to pay any postal money order drawn to the order of Al Williams; Al Williams, Health Conditioner; Al Williams, Physical Conditioner; Al Williams Health System; The Al Williams Health System; Williams Health System; or Al Williams Health System of Los Angeles, Inc.; or [47] to any thereof by said or any similar designation, and from informing the remitter of any such postal money order that payment thereof has been forbidden.

Dated: ~~April 30~~ May 6th, 1948.

PEIRSON M. HALL

Judge of the District Court

Judgment entered May 6, 1948. Docketed May 6, 1948. C. O. Book 50, page 530. Edmund L. Smith, Clerk; by J. M. Horn, Deputy. [48]

Received copy of the within Permanent Injunction this
 rd May
 3rd day of ~~April~~ 1948. James M. Carter, U. S. Atty.,
 Attorney for Defendants; by Gertrude M. Johnson.

[Endorsed]: Filed May 6, 1948. Edmund L. Smith,
 Clerk. [49]

[Title of District Court and Cause]

NOTICE OF APPEAL

Notice is hereby given that defendant above-named does
 herewith and hereby appeal to the United States Circuit
 Court of Appeals for the Ninth Circuit from the final
 judgment and order made, rendered and filed in the
 above-entitled court and cause on the 6th day of May,
 1948, in favor of the plaintiffs and against the defendant
 and from the whole of said judgment and order.

Dated this 21st day of June, 1948.

JAMES M. CARTER

United States Attorney

CLYDE C. DOWNING

Assistant United States Attorney

BERNARD B. LAVEN

Assistant United States Attorney

Copy of the foregoing Notice of Appeal received this
 25th day of June, 1948. Richard L. North, Attorney for
 Plaintiffs.

[Endorsed]: Filed Jul. 2, 1948. Edmund L. Smith,
 Clerk. [50]

[Title of District Court and Cause]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Comes now the defendant above-named and, pursuant to the provisions of subdivision d of Rule 75 of the Federal Rules of Civil Procedure for the District Courts of the United States, files this designation of the points on which he intends to rely upon his appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, and specifies and designates said points as follows, to-wit:

1. That said District Court erred in granting the motion of plaintiffs for summary judgment;
2. That said District Court erred in rendering judgment for the plaintiffs;
3. That the District Court erred in holding that the order of the Postmaster General is not supported by any substantial evidence; [51]
4. That the District Court erred in holding that the expert opinion evidence of Mr. Putnam, a witness on behalf of the Post Office Department, is not substantial evidence to support the order of the Postmaster General;
5. That the District Court erred in issuing a permanent injunction against the defendant.

Dated this 12th day of July, 1948.

JAMES M. CARTER

United States Attorney

CLYDE C. DOWNING

Assistant United States Attorney

BERNARD B. LAVEN

Assistant United States Attorney [52]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 12, 1948. Edmund L. Smith, Clerk. [53]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 56, inclusive, contain full, true and correct copies of Answer; Motion for Summary Judgment; Notice of Motion for Summary Judgment; Amended Answer; Motion to Strike Amended Answer; Notice of Motion to Strike Amended Answer; Minute Order Entered April 19, 1948; Memorandum; Findings of Fact and Conclusions of Law Following Plaintiffs' Motion for Summary Judgment; Order for Summary Judgment; Permanent Injunction; Notice of Appeal; Statement of Points on Appeal and Designation of Record on Appeal which, together with the Complaint and Exhibits thereto and the Amended Complaint and Exhibits thereto, heretofore certified as part of the record on appeal in case No. 11317 in the United States Circuit Court of Appeals for the Ninth Circuit, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 27 day of July, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Endorsed]: No. 11998. United States Circuit Court of Appeals for the Ninth Circuit. Michael J. Fanning. Individually, and as Postmaster of the City of Los An-

geles, California, Appellant, vs. Al Williams and Al Williams Health System of Los Angeles, Inc., a corporation, Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed July 28, 1948.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11998

MICHAEL J. FANNING, Individually, and as Post-
master of the City of Los Angeles, California,

Appellants,

vs.

AL WILLIAMS and AL WILLIAMS HEALTH
SYSTEM OF LOS ANGELES, INC., a corporation,

Appellees.

APPELLANTS' DESIGNATION OF PARTS OF
RECORD TO BE PRINTED AND STATE-
MENT OF POINTS INTENDED TO BE RE-
LIED ON

Appellants above named hereby designate for printing in the above matter the entire transcript, as certified by the Clerk of the United States District Court, except the "Transcript of Record" heretofore printed in No. 11317 in the United States Circuit Court of Appeals for the

Ninth Circuit, and request that this Transcript of Record be made a part of the record in this case, which record was heretofore certified by the Clerk of the United States District Court, and by this reference be incorporated in and made a part of the transcript of record.

Appellants hereby adopt as their points on appeal the "Statement of Points on Which Appellant Intends to Rely on Appeal" as filed in the said United States District Court and as included in Transcript of Record beginning with page 45 thereof, said Statement by this reference being incorporated in and made a part of this document.

Dated: August 9, 1948.

JAMES M. CARTER
United States Attorney

CLYDE C. DOWNING
Assistant United States Attorney
Chief, Civil Division

BERNARD B. LAVEN
Assistant United States Attorney
Attorneys for Appellants

600 Federal Building
Los Angeles 12, California

[Affidavit of Service by Mail.]

[Endorsed]: Filed Aug. 10, 1948. Paul P. O'Brien,
Clerk.